since they could have obtained a copy from Messrs. Sisson & Delay. As regards the grounds of decision, if it is true that Messrs. Drew & Napier only received these grounds on the 12th August, that is entirely the fault of the appellant himself, to whom the grounds of decision were handed by Messrs. Sisson & Delay when they received them from the Court on the 18th July. If the rules are to be relaxed in a case like this, it is more than likely that a practice will grow up of filing in the first instance nominal grounds of appeal only, such as were filed on the 25th July, reliance being placed on an application to amend such grounds at a later date. The provisions of the Criminal Procedure Code state clearly and fairly what the rules of procedure are, and such rules, as stated by the Court of Criminal Appeal in *Nagalingam's* case, should only be relaxed in very exceptional circumstances. I feel satisfied that no such circumstances have been shown to exist and that accordingly this application must be refused.

Application refused.

Solicitors: *Braddell Bros. & Sisson & Delay.*

REX v. LEONG AH CHAN & OTHERS.

[A. Cr. J. (Gordon-Smith J.) October 25, 1935]
[Singapore Special Case No. 4 of 1935]

Ordinance No. 129 (Traction Engines and Motor Cars), s.16 — Statutory rules made thereunder.

Rule 11(2) contained in *Gazette* Notification No. 2606 of 1928 and made under section 16 of Ordinance No. 129 (Traction Engines and Motor Cars) is *ultra vires* and invalid.

Worley (Deputy Public Prosecutor) for the Crown.

Accused in person.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

[39] **Gordon-Smith J.:** The above four cases have been transmitted in accordance with section 310 of the Criminal Procedure Code for the consideration of the High Court by way of special cases stated by the Magistrate in respect of questions of law arising in the respective proceedings.

All four cases arose out of charges made under rule 11(2) of *Gazette* Notification 2606 of 1928 made under section 16 of Ordinance No. 129 (Traction Engines & Motor Cars). In cases (a), (b) and (c) the charges were in respect of the use of worn tyres on lorries, the use of which by reason of their condition was likely to cause danger, and case (d) was brought under the same sub-rule but was in respect of an act likely to cause danger when driving a lorry, namely permitting two persons to travel on the lorry in such a positon and manner as was likely to cause danger to such persons.

The cases were set down for argument on the 7th October and at the outset I intimated to the Deputy Public Prosecutor that it appeared to me that the preliminary point as to the validity of the rule in question arose, on which I should like to hear argument, and the cases stood over for further consideration. This point had not been taken by the Magistrate in stating the cases.

The Deputy Public Prosecutor now states that he is unable to support the validity of the rule in question. In considering the point of the validity of this rule 11 it is necessary to consider the terms of the substantive Ordinance, namely Ordinance 129 as well as the rules promulgated thereunder, but I do not propose to go into the history of the Ordinance which appears in the 1926 Revised Edition of the Laws as Ordinance No. 129 (Traction Engines and Motor Cars) the long title of which is "An Ordinance to regulate the use on public thorugh-fares of Traction Engines and Motor Cars."

In section 2 of the Ordinance a "Motor Car" is defined as including "every description of vehicle propelled by mechanical power other than a Traction Engine." "Traction Engine" means every description of vehicle propelled by mechanical power not constructed for the conveyance of passengers, but shall not include a fire engine or vehicles used in connection therewith."

It follows therefore that a motor lorry is a traction engine and is not a motor car under such definitions but hereafter when I use the expression 'Motor Vehicle' it includes all types of mechanically propelled vehicles save and except fire engines and vehicles used in connection therewith.

The Ordinance provides, shortly, for the licensing and registration of motor vehicles, their identification by means of marks and numbers, the licensing of drivers of such vehicles and the endorsement, suspension and cancellation of drivers' licences. A few offences are also created by the Ordinance itself, such as failing to stop in case of accident (section 9) and in respect of negligent driving, overcrowding, projecting loads and riding otherwise than inside a motor car (section 10). The whole Ordinance only extends to 21 sections but wide powers are conferred upon the Governor in Council to issue orders under section 11 and to make rules under section 16. Section 11 gives power to restrict the use of motor vehicles in certain cases or in certain localities and section 16 is the general rule making authority which particularises to some extent the matters on which rules may be made. These are briefly as follows:—

Para. (a) brakes
„ (b) rules of the road
„ (c) horns
„ (d) emission of sparks, smoke and vapour
„ (e) & (f) are set out below in full
„ (g) trailers of traction engines
„ (h) & (i) the means of identification
„ (j) & (k) registration and fees
„ (l) number of persons to be carried
„ (m) drivers' licenses and fees
„ (n) lights.

Paragraphs (e), (f) and (o) read respectively as follows:—

"(e) to prohibit the use of any appliances or the doing of any act which is likely to cause annoyance or danger;

(f) to regulate the width of tyres, the material of which they may be made and, if necessary, to prohibit the use of any tyres likely to cause damage to roads;

(o) generally to carry out the purposes of this Ordinance."

This last paragraph is, more or less, in the form of the usual "Omnibus" clause to be found in Ordinances which contain rule making powers.

The Court is more particularly concerned with paragraphs (e) and (f) which have been set out *verbatim.*

It is difficult to conceive a form of words which would authorise in more general terms the prohibition of any acts or the use of any appliances which are likely to cause annoyance or danger. Although the paragraph might have been expressed more grammatically I do not think there is any doubt but that the qualifying words apply and are intended to apply both to appliances and acts.

By section 14 of the Ordinance the penalty for contravention of any rules is a fine not exceeding $200 or in case of a secton conviction a fine not exceeding $500 or imprisonment not exceeding three months. In these respects therefore the provisions are penal.

By virtue of the powers so conferred, orders and [40] rules were made by the Governor in Council [40] and are published under Notification 2606 in the *Gazette* of the 31st December, 1928. Orders are there prescribed under section 11 and rules under section 16. It is desirable to consider these rules in some detail and I set out below the respective subject matters of the rules, together with the particular paragraph of section 16 under which they appear to have been made.

Rule 1 deals with brakes (para. (a)).

Rules 2 — 6 lay down directions as to the rules of the road and specify certain signals (para. (b)).

Rule 7 relates to motor horns and their use (para. (c)).

Rule 8 relates to traction engines and the blowing off of steam (para. (d)).

Rule 9 relates to theemission of sparks, smoke and vapour (para. (d)).

Rule 11 is set out *verbatim* hereafter.

Rules 12 and 13 deal in detail with the tyres of motor vehicles, other than those which are pneumatic or of soft or elastic material (para. (f)).

Rules 14 and 15 relate to trailers (para. (g)).

Rules 16, 17, 18 and 19 relate to identification marks (paras. (h) and (i)).

Rules 20 — 27 relate to registration (para. (j)).

Rule 28 prohibits more than one person sitting besides the driver unless the driving seat is railed off (para. (o)).

Rule 29 empowers the Registrar to specify the number of passengers that may be carried (para. (l)).

Rules 30 — 33 relate to the issue of driving licences (para. (m)).

Rules 34 and 35 prescribe the lights that are necessary and when (para. (n)).

Rule 36 relates to registration and rectification of the register (para. (j)).

Rule 11 reads as follows:—

> "11 (1) No person shall use or permit to be used on a public thoroughfare any motor car or traction engine the use of which is likely to cause annoyance or danger.
>
> (2) No person shall use or permit to be used on a public thoroughfare any appliance of any motor car or traction engine the use of which is likely to cause annoyance or danger to anyone or do or permit to be done any act whilst driving a motor car or traction engine on a public thoroughfare which is likely to cause annoyance or danger to anyone."

It is quite clear that this rule has been enacted in purported pursuance of the power contained in paragraph (e) of section 16; in fact, it follows the same wording closely. Instead of prescribing the acts or appliances which are likely to cause annoyance or danger it totally prohibits all such acts or the use of all such appliances. It is a provision for contravention of which there are penal consequences and consequently it must be construed strictly. I would here quote *Maxwell* on the Interpretation of Statutes (7th Edition at p. 255):

> "Rules made under statutory powers enforceable by penalties must be construed like other provisions encroaching on the ordinary rights of persons. They must, on pain of invalidity, be
>
> (a) not unreasonable
>
> (b) not in excess of the statutory power authorising them
>
> (c) nor repugnant to that statute, or
>
> (d) to the general principles of law."

I have paragraphed these four grounds of invalidity and would refer to the number of cases cited in the sub-note on pp. 255 and 256 of *Maxwell* extracts from some of which I will quote later.

What is the power conferred by paragraph (e) of section 16 of the Ordinance?

It is quite plain and straightforward and is expressed in plain and unambiguous language, namely, it is the power to prohibit the use of any appliances or the doing of any act which is likely to cause annoyance or danger. "Appliance" is neither defined in the Ordinance nor in the rules nor is there, in my opinion, any need for a definition as the meaning is self-evident, i.e. it is anything that is applied to a motor vehicle either in its construction, or subsequently.

Next, we have to consider, how the power conferred has been exercised. Instead of specifying or particularising any acts or appliances we find that:

(1) there is a total and general prohibition on the use of all motor vehicles;

(2) there is a total and general prohibition in respect of all appliances;

(3) there is a total and general prohibition in respect of all acts done while driving a motor vehicle;

whenever or if there is any likelihood of causing annoyance or danger to anyone.

It is a sweeping and all embracing prohibition, with penal consequences which may extend to 3 months' imprisonment.

It cannot be denied that the increase in motor traffic in recent years has universally and materially increased the dangers of the road to pedestrians and others. When one considers the death roll of over 6,000 a year in the United Kingdoms for which the increased use of motor vehicles is responsible, it cannot

be argued otherwise. I do not know the number of annual deaths and accidents in Singapore but it must be considerable. Therefore, apparently, according to sub-rule (1) the use of motor vehicles is totally pro-
[41] hibited. This is a startling proposition. [41] Similar remarks apply to appliances used and acts done when driving. The very fact that two or three hundred cars may be parked, say outside the Tanglin Club after some social function and are driven away in the early hours of the morning, with all the attendant nuisances of lights being switched on and off, horns sounded, engines raced, gears changed, etc. must inevitably cause annoyance to the nearby residents.

The number of other examples that could be given are multifarious but the use of motor transport is an essential part of the present-day life of the community and although some people may regard motor vehicles as an evil, they are a very necessary evil.

What I have to consider however is whether the rule is invalid on any of the grounds I have previously set forth:

(a) In the first place I have to be satisfied that the rule is not unreasonable. As I have shown apparently it prohibits a form of transport which has been universally adopted and on which millions of pounds is being spent annually, because, in some undefined and unparticularized respects the use of such form of transport is likely to cause some undefined and unparticularized annoyance or danger to some undefined or unparticularized persons.

As framed, the rule is obviously unreasonable.

(b) Is the rule in exercise of the power conferred by the Ordinance? Paragraph (e) of section 16 gives power to prohibt the use of any appliance or the doing of any act which is likely to cause annoyance or danger. The power is therefore delegated by the Legislature to a rule making authority to define what acts are likely to cause annoyance or danger, and to prohibit those acts so defined and to specify what appliances are within the same category and so prohibit their use. No attempt has been made to do this but instead a sweeping generalization has been promulgated almost in the same words as confer the power. The object of conferring such a power is to avoid defining and prohibiting matters of minor detail or importance in a substantive law thereby lengthening such law to an inordinate extent. Also, conditions may vary from time to time or in different localities and circumstances may alter and it is desirable that there should be a speedy and effective method of enacting subsidiary legislation and of making amendments or variations on matters of detail or minor importance without having recourse to the Legislature every time such becomes necessary, provided of course that there is no alteration or variation of the underlying principles of the substantive law. As has been said, no attempt has been made in this rule to carry out the objects and purposes of the power conferred.

(c) Is the rule repugnant to the Ordinance? The answer is in the affirmative because the whole scope and object of the Ordinance is to regulate and control the use of motor vehicles and not to prohibit their use as is done by the rules in such general and wide terms.

(d) Lastly, is the rule repugnant to the general principles of law?

I have no hesitation in saying it is. It is a rule which has the force and effect of creating an offence but it neither particularises the offence created either in regard to the persons by whom it may be committed, nor as to the appliances or nature of appliances in respect of which an offence may be committed nor as to the circumstances under which such may be committed. It is merely a generalisation of offences that may be committed. All four of the special cases forwarded are in respect of persons charged under sub-rule (2) of rule 11, three cases being for using worn tyres and the remaining case is for doing a dangerous act when driving a motor lorry, the act being the permitting of two Chinese to travel in the lorry in an insecure position. If this rule is valid, why have any other rules at all as to brakes, lights, rules of the road, emission of sparks, smoke, etc., as they would all be covered by this general rule. The Ordinance specifically empowers rules to be made as to tyres and some rules have been made but there is no rule made which covers the actual charge laid under rule 11(2). Consequently nobody knows whether he is contravening the law or not. Many of those matters on which rules may be made are technical and they require defining with precision and detail.

As the rule stands I have no hesitation in declaring that it is invalid under each and every one of the heads I have set forth. In support of this contention I would quote extracts from three cases only, out of the multitude cited in *Maxwell* nearly all of which bear on the foregoing contentions.

In *Kruse* v. *Johnson,* [1898] 2 Q.B. 91, Mr. Justice Mathew said, "From the many decisions on the subject it would seem clear that a by-law to be valid must, among other conditions, have two properties — it must be certain, that is, it must contain adequate information as to the duties of those who are to obey, and it must be [42] reasonable." Neither [42] of these two properties are to be found in the rule in question.

In *Crane* v. *Lawrence,* [1890] 58 L.J.M.C. 110, Mr. Justice Cave said, "It is a sound rule of construction that where a penalty is inflicted one must clearly see whether the language used exposes the person affected to the penalty."

In *London County Council* v. *Aylesbury Diary Co.,* [1898] 1 Q.B. 106, Mr. Justice Wright said, "I have always understood the rule to be that where there is an enactment which may entail penal consequences you ought not to do violence to its language in order to bring people within it but ought rather to take care that no one is brought within it who is not within it in express language."

I hold therefore that rule 11 above referred to, made under Ordinance 129 is invalid.

In none of the four special cases forwarded was this point taken but in three cases (those relating to worn tyres) convictions were recorded subject to the ruling of this Court on the matters put forward. In the remaining case, subject as aforesaid, the accused was acquitted.

In view of my finding, there is no need for me to go into the merits of the cases as similar circumstances or questions should not arise in the future.

In the three cases referred to, the Magistrate is directed to acquit the respective accused and to return the fines if they have been paid. In the remaining case the acquittal is confirmed but not for the reasons given by the learned Magistrate.